



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA – 2015-0111]

Notice of Buy America Waiver

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of Buy America waiver.

SUMMARY: This notice provides NHTSA's finding with respect to a request to waive the requirements of Buy America from the North Carolina Governor's Highway Safety Program (GHSP). NHTSA finds that a non-availability waiver of the Buy America requirement is appropriate for the purchase of a Nikon prismless total station using Federal highway traffic safety grant funds because there are no suitable products produced in the United States.

DATES: The effective date of this waiver is **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Written comments regarding this notice may be submitted to NHTSA and must be received on or before: **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Written comments may be submitted using any one of the following methods:

- **Mail:** Docket Management Facility, M-30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12-140, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590.
- **Fax:** Written comments may be faxed to (202) 493-2251.
- **Internet:** To submit comments electronically, go to the Federal regulations website at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- **Hand Delivery:** West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., between 9 am and 5 pm Eastern Time, Monday through Friday, except Federal holidays.

Instructions: All comments submitted in relation to this waiver must include the agency name and docket number. Please note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. You may also call the Docket at 202-366-9324.

FOR FURTHER INFORMATION CONTACT:

For program issues, contact Barbara Sauers, Office of Regional Operations and Program Delivery, NHTSA (phone: 202-366-0144). For legal issues, contact Andrew DiMarsico, Office of Chief Counsel, NHTSA (phone: 202-366-5263). You may send mail to these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

This notice provides NHTSA's finding that a waiver of the Buy America requirement, 23 U.S.C. § 313, is appropriate for North Carolina's GHSP to purchase a Nikon Nivo 5M Plus and its accessories for \$8,995 using grant funds authorized under 23 U.S.C. § 402. Section 402 funds are available for use by state highway safety programs that, among other things, reduce or prevent injuries and deaths resulting from speeding motor vehicles, driving while impaired by alcohol and or drugs, motorcycle accidents, school bus accidents, and unsafe driving behavior. 23 U.S.C. § 402(a). Section 402 funds are also available to state programs that encourage the proper use of occupant protection devices and improve law enforcement services in motor vehicle accident prevention, traffic supervision, and post-accident procedures. *Id.*

Buy America provides that NHTSA “shall not obligate any funds authorized to be appropriated to carry out the Surface Transportation Assistance Act of 1982 (96 Stat. 2097) or [Title 23] and administered by the Department of Transportation, unless steel, iron, and manufactured products used in such project are produced in the United States.” 23 U.S.C. § 313. However, NHTSA may waive those requirements if “(1) their application would be inconsistent with the public interest; (2) such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.” 23 U.S.C. § 313(b).

Recently, NHTSA published its finding that a public interest waiver of the Buy America requirements is appropriate for a manufactured product whose purchase price is \$5,000 or less, excluding a motor vehicle, when such product is purchased using Federal grant funds administered under Chapter 4 of Title 23 of the United States Code. *See* 80 FR 37359 (June 30, 2015). Under the public interest waiver, therefore, states are no longer required to submit a waiver of Buy America to NHTSA for items costing \$5,000 or less, except for motor vehicles, when they purchase the item with Federal grant funds.

In this instance, the North Carolina’s GHSP seeks a waiver to purchase one (1) Nikon Nivo 5M Plus Reflectorless Total Station equipment¹ for its subgrantee, the Raleigh Police Department, using Federal grant funds, at a cost of \$8,995.² A total station is an electronic/optical instrument used in modern surveying and accident reconstruction.

¹ The Nikon Nivo 5M Plus Reflectorless total station has integrated Bluetooth technology, and includes battery packs, a dual charger, lens cap, CD manual, hard carrying case, tripod, prism kit, prism pole, prism pole bag, strobe prism with tilting mount, carrying bag and data cable.

² As part of its waiver request, GHSP submitted a sales quote for the Nikon total station that included seven (7) additional items costing less than \$5,000. Because these additional items are under the \$5,000 threshold of NHTSA’s public interest waiver, NHTSA did not conduct a market analysis for these items.

Specifically, a total station is an electronic theodolite integrated with an electronic distance meter to read slope distances from the instrument to a particular point. According to North Carolina's GHSP, the total station provides law enforcement with the equipment necessary to provide accurate and detailed crash reconstruction to aid in improving highway safety and for use with the enforcement of traffic safety laws. North Carolina's GHSP states that the total station reduces the time officers need to stand in the roadway with a prism to mark evidence at crash scenes. In addition, the State notes that, with a total station, evidence can be plotted from the side of the road after a roadway has been opened to traffic.

In support of its waiver request, North Carolina's GHSP states that there are no total station models that are manufactured or assembled in the United States. The state contacted total station equipment manufacturers to learn of the origin of their equipment. While several domestic corporations offer total station equipment for sale, North Carolina states its research revealed that all total stations are manufactured overseas. It discovered that CT Berger (China), Leica (Switzerland) Nikon (Japan), Spectra Precision (Japan), Northwest Instruments (China), Topcon (Japan), and Trimble (Sweden) total station equipment are all foreign made.

NHTSA agrees that the total stations advance the purpose of section 402 to improve law enforcement services in motor vehicle accident prevention and post-accident reconstruction and enforcement. A total station is an on-scene reconstruction tool that assists in the determination of the cause of the crash and can support crash investigations. It is an electronic/optical instrument that specializes in surveying with tools to provide precise measurements for diagramming crash scenes, including a laser range finder and a computer to assist law enforcement to determine post-accident reconstruction. The total station system is designed to gather evidence of the events leading up to, during and following a crash. These tools are used to

gather evidence to determine such facts as minimum speed at the time of a crash, the critical speed of a roadway curve, the distance a vehicle may have traveled when out of control and other factors that involve a crash investigation. In some instances, the facts collected through the use of a total station are used to form a basis of a criminal charge or evidence in a criminal prosecution.

NHTSA conducted similar assessments³ to those conducted by North Carolina's GHSP. NHTSA was unable to locate domestic manufacturers of total stations with the specifications that North Carolina's GHSP required. In addition to the manufacturers researched by North Carolina's GHSP, and confirmed by the agency's research, NHTSA identified the following total station manufacturers and their production locations: Hi-Target Instrument Surveying Co. Ltd. (China); geo-Fennel GmbH (Germany); Hilti (Liechtenstein); North Surveying (Spain); South Precision Instrument (China); Ruide Surveying Instrument Co. (China); Pentax (Japan/China); and Topcon (Japan, China and Thailand). Based upon NHTSA's market analysis, it is unaware of any total station equipment that is manufactured domestically. Since a total station is unavailable from a domestic manufacturer and the equipment would assist in post-accident reconstruction and enforcement to advance the purpose of 23 U.S.C. § 402, a Buy America waiver is appropriate. NHTSA invites public comment on this conclusion.

In light of the above discussion, and pursuant to 23 U.S.C. 313(b)(2), NHTSA finds that it is appropriate to grant a waiver from the Buy America requirements to North Carolina's GHSP in order to purchase the Nikon Nivo 5M Plus Reflectorless Total Station equipment. This waiver applies to North Carolina and all other states seeking to use section 402 funds to purchase Nikon Nivo 5m Plus Reflectorless total stations for the purposes mentioned herein. This waiver is

³ NHTSA conducted internet searches and reviewed several websites that catalog domestic made products (www.usaonly.us; www.americansworking.com; www.madeinamericaforever.com; and www.madeinusa.org) to locate domestically made Total Station equipment.

effective through fiscal year 2016 and expires at the conclusion of that fiscal year (September 30, 2016). In accordance with the provisions of Section 117 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy of Users Technical Corrections Act of 2008 (Pub. L. 110-244, 122 Stat. 1572), NHTSA is providing this notice as its finding that a waiver of the Buy America requirements is appropriate for the Nikon Nivo 5m Plus Reflectorless total station.

Written comments on this finding may be submitted through any of the methods discussed above. NHTSA may reconsider this finding if, through comment, it learns additional relevant information regarding its decision to grant the North Carolina's GHSP waiver request.

This finding should not be construed as an endorsement or approval of any products by NHTSA or the U.S. Department of Transportation. The United States Government does not endorse products or manufacturers.

Authority: 23 U.S.C. 313; Pub. L. 110-161.

Paul A. Hemmersbaugh,
Chief Counsel.

Billing Code: 4910-59-P
(signature page for Notice of Buy America waiver)

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